

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ROBERTO DURAND,

Plaintiff,

v.

MARIE BROWN

Defendant.

Case No. 3:22-cv-00263-ART-CSD

ORDER

Pro se Plaintiff Roberto Durand, an inmate in the custody of the Nevada Department of Corrections (“NDOC”), brings this action under 42 U.S.C. § 1983 against Defendant Marie Brown. (ECF No. 1-1.) Plaintiff has filed multiple Motions for Leave to Proceed *in forma pauperis*. (ECF Nos. 3, 4, 5.) United States Magistrate Judge Craig S. Denney denied these IFP applications without prejudice because Plaintiff failed to include the required inmate account statement. (ECF No. 6.) Plaintiff filed another IFP application, but he did not include the required inmate account statement. (ECF No. 7.) Before the Court is a Report and Recommendation (“R&R”) by Judge Denney (ECF No. 8), recommending the Court deny Plaintiff’s most recent IFP application (ECF No. 7) for failure to include the inmate account statement. (ECF No. 8.) Plaintiff filed two objections to the R&R. (ECF Nos. 9, 10 (“Objection”).) Plaintiff then filed an additional IFP application which does not have the required inmate account statement. (ECF No. 11.) Because the Court agrees with Judge Denney’s analysis as to the IFP application, the Court will adopt the R&R in part but grant Plaintiff an additional opportunity to file a proper IFP application. Accordingly, the Court will deny Plaintiff’s IFP applications (ECF No. 7, 11), and instruct Plaintiff to file

1 an IFP application within the next 30 days that includes a certified copy of the
2 inmate trust fund account statement.

3 This Court “may accept, reject, or modify, in whole or in part, the findings
4 or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where
5 a party timely objects to a magistrate judge’s report and recommendation, then
6 the Court is required to “make a de novo determination of those portions of the
7 [report and recommendation] to which objection is made.” *Id.* The Court’s review
8 is thus de novo because Plaintiff filed his Objection. (ECF Nos. 9, 10.)

9 Plaintiff objected to the Report and Recommendation, stating that he
10 requested authorization for filing fees to be withdrawn from his account. (ECF
11 Nos. 9, 10). In his most recent IFP application, Plaintiff does not include the
12 required inmate account statement. (ECF No. 11.) For the action to proceed,
13 Plaintiff must either pay the \$402 filing fee or complete an IFP application and
14 attach 1) a financial certificate and 2) a certified copy of the trust fund account
15 statement for the six-month period immediately preceding the filing of the
16 complaint. Because the most recent IFP application is still missing this certified
17 copy of the inmate trust fund account, it will be dismissed.

18 It is therefore ordered that Judge Denney’s Report and Recommendation
19 (ECF No. 8) is accepted and adopted in part.

20 It is further ordered that Plaintiff’s latest IFP applications (ECF No. 7,11)
21 be denied.

22 It is further ordered that Plaintiff file within 30 days of this order a new IFP
23 application that includes both the financial certificate and the certified copy of
24 the trust fund account statement.

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1 DATED THIS 31st Day of July 2023.

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4 ANNE TRAUM
5 UNITED STATES DISTRICT JUDGE
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